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July 14, 2022

VIA ECF

Hon. John G. Koeltl
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Hachette Book Group, Inc. et al. v. Internet Archive et al.*,
No. 1:20-cv-04160-JGK

Dear Judge Koeltl:

Proposed *amicus curiae* Michelle M. Wu respectfully seeks leave to file the accompanying proposed brief as *amicus curiae*. Ms. Wu is a former Professor of Law and the former Law Library Director at Georgetown University Law Center, who is widely recognized as the originator of the legal theory underlying controlled digital lending (“CDL”), the theory central to the parties’ dispute in this case.

Because there is no rule directly on point, this Court has “broad discretion” to accept *amicus* briefs that can provide guidance in resolving novel or thorny legal issues. *See, e.g., City of New York v. United States*, 971 F. Supp. 789, 791 n.3 (S.D.N.Y. 1997), *aff’d*, 179 F.3d 29 (2d Cir. 1999). This Court should grant leave to file the attached brief because *amicus* has “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *C&A Carbone, Inc. v. Cnty. Of Rockland*, No. 08-cv-6459-ER, 2014 WL 1202699, at *3–4 (S.D.N.Y. Mar. 24, 2014) (citation omitted).

Ms. Wu, through her career spanning over twenty-five years working with every function in a library from interlibrary loan to cataloging to reference to systems administration, speaks from the perspective of librarians, libraries, readers, and countless others who benefit from CDL and may be impacted by the Court’s decision in this case. Furthermore, as a legal academic who originated the legal theory at issue in this case, Ms. Wu provides unique context on the many equitable interests necessary to the fair use analysis concerning CDL.

Defendant Internet Archive has consented to the filing of the proposed *amicus* brief. Plaintiffs have not consented to and oppose the filing of the proposed *amicus* brief. Nevertheless, the decision whether to grant leave or not is within the sole discretion of this Court. *See Young Advocates for Fair Education v. Cuomo*, No. 18-cv-

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4167, 2018 WL 10561496 (E.D.N.Y. Oct. 30, 2018) (granting leave to file *amicus* briefs over defendants' opposition to the request).

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Thank you for Your Honor's consideration in this matter. I am happy to answer any questions the Court may have.

Sincerely,

/s/ *Max Rodriguez*

Max Rodriguez